

Form I-601, *Application for Waiver of Ground of Inadmissibility*

I. Introduction

The Form I-601, *Application for Waiver of Ground of Inadmissibility*, is used by applicants for immigrant visas, non-immigrant fiancé visas, V visas, and adjustment of status to request a waiver of the following grounds of inadmissibility in the Immigration and Naturalization Act (INA):

- Section 212(a)(1) – health-related grounds;
- Section 212(a)(2) – criminal and related grounds,
- Section 212(a)(3)(D) - immigrant membership in a totalitarian party;
- Section 212(a)(6)(C) – misrepresentation in immigration matters;
- Section 212(a)(6)(E) - smugglers;
- Section 212(a)(6)(F) - subject to civil penalty;
- Section 212(a)(9)(B) – unlawful presence in the U.S. for at least 180 days, beginning on or after April 1, 1997, followed by departure from the U.S.

Form I-601 is also used to waive certain grounds of inadmissibility when an applicant is seeking immigration benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), and under the Temporary Protected Status (TPS) or Violence Against Women Act (VAWA) program. Because officers at international USCIS offices are not likely to encounter these types of waiver applications, this SOP will only briefly address them.

II. Authorities and Resources

A. Applicable Statutory and Regulatory Provisions

1. Grounds of Inadmissibility and Waiver Provisions

The statutory and regulatory authority of USCIS to grant waivers is outlined in the chart below. International offices are unlikely to encounter waivers of inadmissibility that are based on HRIFA, NACARA, TPS, and VAWA; however, information regarding those provisions is included below for informational purposes.

Type of Inadmissibility	Inadmissibility Ground	Waiver Authority	Regulation / Notes
Health-related	212(a)(1)	212(g)	8 CFR 212.7(b)
Criminal-related	212(a)(2)	212(h)	212.7(d)
Immigrant membership in a totalitarian party	212(a)(3)(D)	212(a)(3)(D)(iv) (for close family members)	
Misrepresentation	212(a)(6)(C)	212(i)	
Smugglers	212(a)(6)(E)	212(d)(11)	
Subject of civil penalty	212(a)(6)(F)	212(d)(12)	
Unlawful presence	212(a)(9)(B)	212(a)(9)(B)(v)	
Previous immigration violation by approved VAWA self Petitioner	212(a)(9)(C)	212(a)(9)(C)(iii)	NOTE: Reinstatement under 241(A)(5) does not apply to these applicants.
Prior Removal and previous immigration violations by NACARA 202 or HRIFA beneficiaries	212(a)(9)(A) and (C)	LIFE ACT amendments, PL 106-554, section 1505	8 CFR 245.13(c) and 8 CFR 245.15(e). NOTE: Reinstatement under 241(a)(5) does not apply to these applicants
Almost Any Ground of Inadmissibility for Applicants for TPS	212(a) inadmissibility grounds that apply may be waived, except for the following: <ul style="list-style-type: none"> • 212(a)(2)(A); • 212(a)(2)(B); • 212(a)(2)(C) relating to drug offenses, except for a single offense of simply possession of 30 grams or less of marijuana; • 212(a)(3)(A); • 212(a)(3)(B); • 212(a)(3)(C); or • 212(a)(3)(E). 	244(c)(2)	8 CFR 244.3

The regulations governing the waiver application requirements, such as jurisdiction and filing procedures, can be found at 8 CFR 212.7.

It is important to note that there are no waivers available for certain scenarios that are commonly encountered in the overseas context. For example, an applicant applying for a waiver based on having accrued unlawful presence in the U.S. may also be inadmissible for having failed to attend an immigration court hearing. Therefore, officers must carefully review the record to identify all grounds of inadmissibility. Various scenarios that may be common in the overseas context and for which no waivers are available are identified throughout this manual.

2. Motions to Reopen and Motions to Reconsider

Regulations governing motions to reopen and motions to reconsider are found at 8 CFR 103.5.

3. Appeals

Under DHS Delegation Memo 150.1, paragraph II(U), a Form I-601 applicant may appeal a USCIS decision denying the Form I-601 to the USCIS Administrative Appeals Office (AAO). The applicant does so by filing Form I-290B, *Notice of Appeal* to the AAO. Regulations governing appeals of denials of Form I-601 are found at 8 CFR 103.3 and 212.7(a)(3).

B. BIA Decisions

Precedent BIA decisions provide guidance on inadmissibility grounds, extreme hardship, and discretion. See training materials for the most recent BIA decisions relevant to extreme hardship, inadmissibility grounds, and the exercise of discretion.

C. Foreign Affairs Manual

The grounds of inadmissibility and the administration of these grounds by the U.S. Department of State are described in Title 9 of the Foreign Affairs Manual (FAM) Section 40 of the U.S. Department of State. Details about DOS administration are found in the accompanying notes. Of particular use are the following:

- 9 FAM 40.11 Notes (Medical grounds)
- 9 FAM 40.21(a) and (b) Notes (Crimes involving moral turpitude and controlled substances)
- 9 FAM 40.63 Notes (Material misrepresentation)
- 9 FAM 40.92 Notes (Unlawful presence)
- 9 FAM 40.93 Notes (Aliens unlawfully present after immigration violation)
- An abridged list of all grounds of inadmissibility can be found at 9 FAM 40.6, Exhibit 1.

D. Adjudication Tools (Appendices)

1. Inadmissibility Grounds and Waivers Chart (Appendix 1)
2. Adjudication Worksheet (Appendix 2)
3. Unlawful presence calculation cribsheet (Appendix 3)

4. A-file document request list (Appendix 4)
5. Templates (Appendix 5)
6. Appeal Checklist (Appendix 6)

III. Validity of an Approved Waiver

A. Valid Only for the Crimes, Events, or Incidents Specified in the Waiver Applications

Under 8 CFR 212.7(a)(4), an approved waiver is only valid for those crimes, events, or incidents specified in the application for a waiver. Except as specified in Sections III(B), (C) or (D) of these procedures, or for individuals granted Temporary Protected Status (TPS), once granted, the waiver is valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status.

If an individual had been in the United States on TPS status and the status was granted after a waiver of inadmissibility was approved, the applicant is required to obtain a new waiver when applying for other benefits, if still inadmissible. The waiver granted for TPS purposes is valid only for TPS purposes.

B. Validity of a Waiver Granted to an Alien who Obtains Lawful Permanent Residence on a Conditional Basis under INA 216

Any waiver that is granted to an alien who obtains lawful permanent residence on a conditional basis under INA 216 shall automatically terminate concurrently with the termination of such residence pursuant to INA 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under INA 216, and no appeal may be taken from the decision to terminate the waiver on this basis. However, if the individual is found not to be deportable in a removal proceeding based on the termination, the waiver shall again become effective. 8 CFR 212.7(a)(4).

C. Conditional Grant of a Waiver to K-1 and K-2 Visa Applicants

Although the K classification is a nonimmigrant classification and is generally eligible for an INA 212(d)(3)(A) nonimmigrant waiver, DHS regulations permit the K visa applicant to file a Form I-601 to obtain an *immigrant* waiver of admissibility. 8 CFR 212.7(a). USCIS has jurisdiction of section 212(d)(3)(A) requests in the case of K nonimmigrants. A separate 212(d)(3)(A) application and fee is not required when a section 212(d)(3)(A) request originates with a Department of State officer. 8 CFR 212.4(a)(1). Generally, a consular officer may forward to USCIS both a Form I-601 packet (for the immigrant waiver) and a Form OF-221, *Two-Way Visa Action and Response*, recommending a grant of a nonimmigrant waiver. (9 FAM 41.81 N9.3). If the consular officer submits an OF-221 along with the Form I-601 and USCIS staff approve the Form I-601, USCIS staff should also approve the OF-221. If the Form I-601 is denied, staff should also deny the OF-221. Because a K-1 (and K-2) applicant does not yet have the requisite relationship to a United States citizen, to qualify for an immigrant waiver, the approval of the Form I-601 is granted on a conditional basis. That is, USCIS makes a final determination on the eligibility for an immigrant waiver from inadmissibility once the applicant (or the applicant's spouse) has celebrated a bona fide marriage to the U.S. citizen who had filed